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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES, AFL-CIO, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as
President of the United States, *et al.*,

Defendants.

Case No.: 3:25-cv-03070-JD

**DECLARATION OF
THOMAS DARGON, JR.**

DECLARATION OF THOMAS DARGON, JR.

I, Thomas Dargon, Jr., declare as follows:

1. I am over 18 years of age and competent to give this declaration. This declaration is based on my personal knowledge, information, and belief.

2. I am the Deputy General Counsel for the American Federation of Government Employees, AFL-CIO, National Veterans Affairs Council ("VA Council"). The VA Council is an independent bargaining council within the AFGE national union representing employees at the U.S. Department of Veterans Affairs ("VA") and their constituent AFGE local unions. It is the largest consolidated bargaining unit in the federal government, representing approximately 310,000 bargaining unit employees in more than 1,000 facilities across the country. The VA Council represents employees in each VA administration, and its bargaining unit covers hundreds of positions, including, but not limited to, physicians, registered nurses, dentists, physician assistants, social workers, psychologists, physical therapists, medical support assistants, nursing assistants, health technicians, social science specialists, housekeepers, police officers, veterans service representatives, cemetery caretakers, plumbers, and electricians.

3. As Deputy General Counsel, I supervise a group of attorneys and professional staff. I served on the VA Council's negotiating team during the renegotiation of AFGE's nationwide collective bargaining agreement ("CBA") with VA. I also provide representation and general assistance to local unions and bargaining unit employees to pursue statutory appeals as well as grievances under the CBA to enforce their statutory and contractual rights, including through binding arbitration and exceptions to the Federal Labor Relations Authority ("FLRA"). Through the duties of my position, I am familiar with the CBA as well as the many services provided by AFGE. I am also familiar with the harm that will be done to VA employees if they are forced to go without their CBA or if AFGE is no longer recognized as their exclusive representative, even for a few months.

4. The CBA contains countless substantive terms negotiated on behalf of VA employees that cannot be unilaterally changed by VA without first bargaining in good faith with the union. These include terms that are specifically important to VA employees in their day-to-

1 day work, such as guaranteed time off between shifts, mandatory lunch breaks, mandatory rest
2 periods for employees working overtime, ninety-day performance improvement plans,
3 “temporary promotion” pay for employees assigned to perform higher-graded duties, and a long
4 list of detailed provisions guaranteeing that employees will be provided with adequate safety
5 equipment and a safe working environment. The CBA also provides enforcement mechanisms to
6 ensure that VA complies with those provisions, such as union notification requirements, a
7 request-for-information procedure that allows local unions access to important safety-related
8 records, and a negotiated grievance and arbitration procedure should VA fail to meet its
9 obligations under the CBA, federal law, government-wide regulation, or VA policy.

10 5. In the absence of the CBA and the right to collectively bargain, VA could make
11 unilateral changes to conditions of employment, and employees will be deprived of the
12 negotiated grievance procedure that allows them to bring complaints about workplace disputes
13 before a neutral third party, namely an independent arbitrator appointed through the Federal
14 Mediation and Conciliation Service. Moreover, because there is a contractual time limit to
15 pursue grievances under the CBA, those rights will not be recoverable at a later date.

16 6. The CBA also provides for “official time” consistent with 5 U.S.C. § 7131, which
17 union representatives can use to perform their representational duties during the workday. I am
18 aware that certain VA facilities within the Veterans Benefits Administration are no longer
19 recognizing or approving official time for certain AFGE representatives—a directive that has
20 been communicated to local unions.

21 7. One concrete benefit of official time is allowing union representatives to resolve
22 payroll-related disputes, which are particularly complex at VA. The rules governing VA
23 employee pay are extremely nuanced. Frontline employees as well as human resources, payroll,
24 and management officials often misunderstand employee entitlements to shift differentials,
25 premium pay, overtime pay, and hazard pay. The payment of timely and correct compensation
26 also depends on how employees are coded in the various VA human resources and payroll
27 systems, including whether they are eligible for pay entitlements under the Fair Labor Standards
28 Act (“FLSA”) or those set forth in Title 5 and Title 38 of the U.S. Code. Union representatives at

1 the VA are specially trained to assist employees to recognize and correct complex payroll issues.
2 Union representatives routinely succeed in assisting employees to rectify underpayments, either
3 through making an informal request to responsible human resources, payroll, or management
4 officials, or by pursuing a formal grievance on behalf of individual employees or groups of
5 similarly situated employees. When an underlying payroll error impacts a larger population of
6 VA employees, the VA Council may elect to pursue a national level grievance under the CBA on
7 behalf of the bargaining unit. The VA Council's national level grievances under the CBA and
8 resulting arbitration awards have resulted in the recovery of hundreds of millions of dollars in
9 back pay in recent years.

10 8. Union representatives can assist employees and perform representational duties
11 during the workday because the Federal Service Labor-Management Relations Statute
12 ("Statute") and the CBA provide for official time. Should VA employees be without official time
13 under the Statute or their CBA—even for a short period—many of the 310,000 VA employees
14 represented by AFGE will not be able to rectify payroll errors, resolve workplace disputes, or
15 utilize the negotiated grievance procedure to obtain relief they are owed from neutral third-party
16 arbitrators. Moreover, because grievances must be filed within 30 calendar days of the
17 underlying violation, those rights will not be recoverable even if the CBA is later restored.

18 9. VA employees who are deprived of the CBA may also miss out on upward
19 mobility and career advancement opportunities. For example, the CBA includes both
20 reassignment and merit promotion provisions to ensure that qualified, internal candidates will be
21 considered first for vacant positions. Should a VA employee be deprived of a career
22 advancement opportunity because the CBA is not in effect, that particular opportunity will be
23 permanently lost.

24 10. The CBA also includes important procedural protections for employees facing
25 discipline. For example, the CBA reinforces VA employees' statutory "Weingarten rights,"
26 which, upon request, allow a union representative to represent employees in any investigatory
27 examination that could reasonably result in disciplinary action. In my experience, the majority of
28 employees who are facing an investigation or disciplinary action avail themselves of their right

1 to representation, which is seen as one of the most important services the union provides.

2 11. Another major representational duty that union officials perform during official
3 time is advising and representing employees who are facing disciplinary action, such as
4 admonishments, reprimands, suspensions, demotions, and removals from the federal service.
5 Given the administration's stated desire to "swiftly terminate" civil servants it deems to be "poor
6 performing employees," there will be an increased demand for the union's services moving
7 forward. Recently, VA unilaterally implemented a number of new workplace rules that will
8 likely lead to increased discipline for employees. This includes rules that impede employees' free
9 speech, such as the so-called "flag policy" that bans most non-military affinity group flags from
10 VA facilities, another rule barring employees from including pronouns or their role as a union
11 representative in VA email signatures, and another rule implementing employee surveillance
12 tools on government equipment. Notably, the CBA prohibits the electronic recording of
13 conversations between employees and management officials without mutual consent. Due to
14 VA's unilateral implementation of these workplace rules in violation of the CBA, and absent
15 immediate relief, employees may be subjected to more disciplinary action.

16 12. Moreover, the CBA provides VA employees with access to the negotiated
17 grievance and arbitration procedure to appeal the merits of adverse personnel actions to a neutral
18 third-party arbitrator, which is not available under VA's administrative grievance procedure
19 wherein VA appoints its own internal "grievance examiner." Statutory appeals to independent
20 agencies like the Equal Employment Opportunity Commission, Office of Special Counsel, and
21 Merit Systems Protection Board are only available in limited circumstances, and even so, are
22 limited in scope and available relief. In short, unless it involves a claim of discrimination or
23 reprisal, VA employees covered by the Title 5 personnel system, including more than 230,000
24 VA workers represented by AFGE, can only obtain neutral third-party arbitrator review of the
25 merits of disciplinary action (i.e., admonishments, reprimands, or suspensions of 14 calendar
26 days or less) by utilizing the CBA's negotiated grievance procedure. Likewise, unless it involves
27 a claim of discrimination or reprisal, VA employees covered by the Title 38 personnel system,
28 including more than 80,000 physicians, dentists, registered nurses, physician assistants,

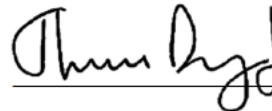
1 optometrists, podiatrists, chiropractors, and expanded-function dental auxiliaries represented by
2 AFGE, can only obtain neutral third-party arbitrator review of the merits of adverse or major
3 adverse actions by utilizing the CBA's negotiated grievance procedure.

4 13. While management retains the right to hire, fire, or discipline employees, the
5 CBA provides protections to ensure that employees are afforded the right to union
6 representation, as well as a comprehensive process to respond to proposed discipline and later
7 appeal wrongful discipline to a neutral third-party arbitrator. If VA employees are forced to go
8 without the CBA's protections and access to the negotiated grievance procedure, even for a short
9 time, employees will be deprived of their choice of forum and their right to seek review before a
10 neutral third-party arbitrator. That is an injury will cause irreparable harm to those employees.

11 14. In short, the CBA provides many procedural and substantive rights to VA
12 employees that if lost, even for a short time, will cause irreparable harm to those employees.

13
14 I declare under penalty of perjury under the laws of the United States that the foregoing is true
15 and correct.

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17 Date: May 7, 2025



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